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REPORT TO THE ECONOMIC AND SOCIAL COUNCIL ON THE FIFTY-FOURTH SESSION OF THE COMMISSION

Draft report of the Commission

Rapporteur: Mr. Roman Kuzniar

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* Documents E/CN.4/1998/L.10 and addenda will contain the chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Commission, as well as draft resolutions and decisions for action by, and other matters of concern to, the Economic and Social Council, will be contained in documents E/CN.4/1998/L.11 and addenda.

GE.98-11707 (E)

1998/7. Question of a draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms

The Commission on Human Rights,

Recalling its decision 1984/116 of 16 March 1984, by which it established an open-ended working group to draft a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms,

Recalling also its subsequent resolutions, in particular resolution 1997/70 of 16 April 1997, in which it decided to continue its work with a view to adopting the draft declaration at its fifty-fourth session,

Recalling further that the World Conference on Human Rights recommended speedy completion and adoption of the draft declaration,

Conscious of the importance of the adoption of the draft declaration in the context of the fiftieth anniversary of the Universal Declaration of Human Rights,

1. Welcomes with deep appreciation the report of the open-ended working group set up by the Commission to draft a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms (E/CN.4/1998/98) and, in particular, the fact that the working group was able to complete its task and to submit the text of the draft declaration to the Commission at its fifty-fourth session;

2. Approves the text of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, as contained in the annex to the present resolution;

3. Decides to consider this issue at its fifty-fifth session under the agenda item entitled "Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission";

4. Recommends the following draft resolution to the Economic and Social Council for adoption:

"The Economic and Social Council,

"Noting Commission on Human Rights resolution 1998/.. of ... 1998, in which the Commission approved the text of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms (E/CN.4/1998/98, annex),

"1. Expresses its appreciation to the Commission on Human Rights for finalizing the draft declaration;

"2. Approves the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms as contained in the annex to the present resolution and recommends it to the General Assembly for adoption at its fifty-third session;

"3. Recommends that, after adoption by the General Assembly, the full text of the Declaration should be disseminated as widely as possible."

31st meeting
3 April 1998
[Adopted without a vote. See chap. XIX.]

Annex

Draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms

PREAMBLE

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter of the United Nations,

Acknowledging the important role of international cooperation for and the valuable work of individuals, groups and associations in contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity, and from refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible and interdependent and interrelated, and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of these rights and freedoms,

Stressing that the primary responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for, and foster knowledge of, human rights and fundamental freedoms at the national and international levels,

Declares:

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political as well as other fields and the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all these rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in this Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed, and within which all activities referred to in this Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations nor as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how these rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge of all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to these matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles, and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of one's country and in the conduct of public affairs.

2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs, criticism and proposals for improving their functioning and to draw attention to any aspect of their work which may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in this Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of violation of these rights.

2. To this end, everyone whose rights or freedoms are allegedly violated, has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law, and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms; as well as enforcement of the eventual decision and award; all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, inter alia:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms by petitions or other appropriate means to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials, to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in

association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or failure to act where required, in violating human rights and fundamental freedoms, and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this Declaration.

In this connection, everyone is entitled, individually and in association with others, to be effectively protected under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States which result in violations of human rights and fundamental freedoms as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms, through peaceful means, in accordance with article 3 of this Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, inter alia:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the State's periodic reports to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institutions.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education, and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16

Individuals, non-governmental organizations and relevant institutions have an important role in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to further strengthen, inter alia, understanding, tolerance, peace and friendly relations

among nations and amongst all racial and religious groups, bearing in mind the various backgrounds of societies and communities, in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in this Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community in which alone the free and full development of his or her personality is possible.

2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

3. Likewise, they have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this Declaration.

Article 20

Nor shall anything in the present Declaration be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

1998/8. Question of the death penalty

The Commission on Human Rights,

Recalling article 3 of the Universal Declaration of Human Rights, which affirms the right of everyone to life, article 6 of the International Covenant on Civil and Political Rights and articles 6 and 37 (a) of the Convention on the Rights of the Child,

Recalling General Assembly resolutions 2857 (XXVI) of 20 December 1971 and 32/61 of 8 December 1977 on capital punishment, as well as resolution 44/128 of 15 December 1989, in which the Assembly adopted and opened for signature, ratification and accession the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,

Recalling Economic and Social Council resolutions 1574 (L) of 20 May 1971, 1745 (LIV) of 16 May 1973, 1930 (LVIII) of 6 May 1975, 1984/50 of 25 May 1984, 1985/33 of 29 May 1985, 1989/64 of 24 May 1989, 1990/29 of 24 May 1990, 1990/51 of 24 July 1990 and 1996/15 of 23 July 1996,

Recalling also its resolution 1997/12 of 3 April 1997 in which the Commission expressed its conviction that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights,

Welcoming the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda are authorized to impose,

Welcoming the fact that several countries, while still keeping the death penalty in their penal legislation, are applying a moratorium on executions,

Referring to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1998/68 and Add.1-3), with respect to the Safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984,

Deeply concerned that several countries impose the death penalty in disregard of the limitations provided for in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child,

Concerned also that several countries, in imposing the death penalty, do not take into account the Safeguards guaranteeing protection of the rights of those facing the death penalty,

1. Welcomes the report of the Secretary-General containing information on changes in law and practice concerning the death penalty worldwide and further positive developments reflected in that report (E/CN.4/1998/82 and Corr.1);

2. Calls upon all States parties to the International Covenant on Civil and Political Rights that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

3. Urges all States that still maintain the death penalty:

(a) To comply fully with their obligations under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, notably not to impose the death penalty for any but the most serious crimes, not to impose it for crimes committed by persons below eighteen years of age, to exclude pregnant women from capital punishment and to ensure the right to seek pardon or commutation of sentence;

(b) To observe the Safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984;

4. Calls upon all States that still maintain the death penalty:

(a) Progressively to restrict the number of offences for which the death penalty may be imposed;

(b) To establish a moratorium on executions, with a view to completely abolishing the death penalty;

(c) To make available to the public information with regard to the imposition of the death penalty;

5. Requests the Secretary-General to continue to submit to the Commission on Human Rights, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement on changes in law and practice concerning the death penalty worldwide to his quinquennial report on capital punishment and implementation of the Safeguards guaranteeing protection of the rights of those facing the death penalty;

6. Decides to continue consideration of the matter at its fifty-fifth session under the same agenda item.

31st meeting
3 April 1998
[Adopted by a roll-call vote of 26 to 13, with 12 abstentions. See chap. XIII.]

1998/9. Status of the International Covenants on Human Rights

The Commission on Human Rights,

Recalling General Assembly resolution 52/116 of 12 December 1997, and its own decision 1997/104 of 3 April 1997,

Mindful that the International Covenants on Human Rights constitute the first all-embracing and legally binding international treaties in the field of human rights and, together with the Universal Declaration of Human Rights, form the core of the International Bill of Human Rights,

Having considered the report of the Secretary-General on the status of the International Covenants on Human Rights (E/CN.4/1998/83 and E/CN.4/1998/84),

Recalling the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and reaffirming that all human rights and fundamental freedoms are indivisible and interrelated and that the promotion and protection of one category of rights should never exempt or excuse States from the promotion and protection of the other rights,

Recognizing the important role of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in the implementation of the International Covenants on Human Rights and the Optional Protocols to the International Covenant on Civil and Political Rights,

1. Reaffirms the importance of the International Covenants on Human Rights as major parts of international efforts to promote universal respect for and observance of human rights and fundamental freedoms;

2. Appeals strongly to all States that have not yet done so to become parties to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as to accede to the Optional Protocols to the International Covenant on Civil and Political Rights and to make the declaration provided for in its article 41;

3. Invites the United Nations High Commissioner for Human Rights to intensify systematic efforts to encourage States to become parties to the International Covenants on Human Rights and, through the programme of advisory services in the field of human rights, to assist such States, at their request, in ratifying or acceding to the Covenants and to the Optional Protocols to the International Covenant on Civil and Political Rights;

4. Emphasizes the importance of the strictest compliance by States parties with their obligations under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and, where applicable, the Optional Protocols to the International Covenant on Civil and Political Rights;

5. Stresses the importance of avoiding the erosion of human rights by derogation, and underlines the necessity of strict observance of the agreed conditions and procedures for derogation under article 4 of the International Covenant on Civil and Political Rights, bearing in mind the need for States parties to provide the fullest possible information during states of emergency, so that the justification for the appropriateness of measures taken in these circumstances can be assessed;

6. Also stresses the importance of fully taking into account the gender perspective in the implementation of the International Covenants on Human Rights at the national level, including the national reports, and in the work of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights;

7. Encourages the States parties to consider limiting the extent of any reservations they lodge to the International Covenants on Human Rights, to formulate any reservations as precisely and narrowly as possible and to ensure that no reservation is incompatible with the object and purpose of the relevant treaty or otherwise contrary to international law;

8. Also encourages the States parties to review regularly any reservations made in respect of the provisions of the International Covenants on Human Rights with a view to withdrawing them;

9. Invites the Committees to identify specific needs of States parties that might be addressed through the advisory services and technical assistance programme of the Office of the High Commissioner for Human Rights, with the possible participation of members of the Committees where appropriate;

10. Welcomes the continuing efforts of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights to strive for uniform standards in the implementation of the provisions of the International Covenants on Human Rights, and appeals to other bodies dealing with similar human rights questions to respect those uniform standards, as expressed in the general comments of the Committees;

11. Takes note of General Comment No. 26 adopted by the Human Rights Committee and General Comment Nos. 7 and 8 adopted by the Committee on Economic, Social and Cultural Rights since the fifty-third session of the Commission;

12. Urges States parties to fulfil in good time such reporting obligations under the International Covenants on Human Rights as may be requested and in their reports to make use of gender-disaggregated data;

13. Also urges States parties to take duly into account, in implementing the provisions of the International Covenants on Human Rights, the observations made at the conclusion of the consideration of their reports by the Human Rights, Committee and by the Committee on Economic, Social and Cultural Rights, as well as the views adopted by the Human Rights Committee under the first Optional Protocol to the International Covenant on Civil and Political Rights;

14. Invites States parties to give particular attention to the dissemination at the national level of the reports they have submitted to the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, the summary records relating to the examination of those reports by the Committees and the observations made by the Committees at the conclusion of the consideration of the reports;

15. Encourages once again all Governments to publish the texts of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocols to the International Covenant on Civil and Political Rights in as many local languages as possible and to distribute them and make them known as widely as possible in their territories;

16. Requests the Secretary-General to consider ways and means of assisting States parties to the International Covenants on Human Rights in the preparation of their reports, including seminars or workshops at the national level for the purpose of training government officials engaged in the

preparation of such reports, and the exploration of other possibilities available under the regular programme of advisory services in the field of human rights;

17. Also requests the Secretary-General to ensure that the Office of the High Commissioner for Human Rights effectively assists the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in the implementation of their respective mandates, including by the provision of adequate Secretariat staff resources;

18. Further requests the Secretary-General to submit to the Commission, at its fifty-fifth and fifty-sixth sessions, a report on the status of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocols to the International Covenant on Civil and Political Rights, including all reservations and declarations;

19. Decides to consider the question at its fifty-fifth session under the item entitled "Status of the International Covenants on Human Rights".

31st meeting
3 April 1998

[Adopted without a vote. See chap. XIII.]

1998/10. Fiftieth anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide

The Commission on Human Rights,

Guided by the principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, as well as other relevant international instruments of human rights,

Recalling that the General Assembly, in adopting the Universal Declaration of Human Rights on 10 December 1948, recognized the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

Recalling that the General Assembly, in adopting the Convention on the Prevention and Punishment of the Crime of Genocide on 9 December 1948, recognized genocide as an odious scourge which had inflicted great losses on humanity and was convinced that international cooperation was required to facilitate the speedy prevention and punishment of the crime of genocide,

Concerned that despite the efforts of the international community, many thousands of innocent human beings continue to be victims of genocide,

Recalling the adoption by the General Assembly of resolution 96 (I) of 11 December 1946 in which it declared genocide to be a crime under international law, contrary to the spirit and aims of the United Nations,

Taking into consideration the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 26 November 1968,

Considering that the fiftieth anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide provides a new opportunity for the international community to draw the attention of all States to the significance of the Convention and to invite them to redouble their efforts for the prevention and punishment of the crime of genocide,

1. Reaffirms the significance of the Convention on the Prevention and Punishment of the Crime of Genocide as an effective international instrument for the punishment of the crime of genocide;

2. Expresses its appreciation to all States that have ratified or acceded to the Convention on the Prevention and Punishment of the Crime of Genocide;

3. Invites States that have not yet ratified or acceded to the Convention on the Prevention and Punishment of the Crime of Genocide to consider doing so;

4. Calls upon all States to increase and intensify their activities aimed at the full implementation of the provisions of the Convention.

31st meeting
3 April 1998

[Adopted without a vote. See chap. XIII.]